

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

Mr. Notopoulos
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FILE: B-196010.2

DATE: September 5, 1980

MATTER OF: Arawak Consulting Corporation
Request for Reconsideration

DIGEST:

1. Pursuant to request for reconsideration, GAO will consider certain bid protest allegations dismissed as untimely in initial decision for failure to comply with filing deadlines of 4 C.F.R. 20.2 (b). This action is taken because, in granting protester extension of time limits set forth in 4 C.F.R. 20.3 (d) for filing comments on agency report, GAO may have unintentionally misled protester into belief that requirements of 4 C.F.R. 20.2 (b) had been waived.
2. Where contracting agency recommends contractor to SBA under "8(a)" program, GAO will not disturb evaluators' judgmental decisions absent showing of fraud or bad faith. Since protester does not allege, and record does not indicate fraud or bad faith by agency evaluators, GAO will not object to evaluation.

Arawak Consulting Corporation (Arawak) requests reconsideration of our decision, Arawak Consulting Corporation, B-196010, 59 Comp. Gen. ____ (1980), 80-1 CPD 404, in which we denied in part, and dismissed in part, Arawak's protest of the evaluation, selection, and award process used by the Department of Health and Human Services (HHS) under a requirement solicited as a set-aside pursuant to the Small Business Administration's (SBA) "8(a)" program.

Arawak requests that we consider those allegations dismissed in our prior decision as untimely under our Bid Protest Procedures, 4 C.F.R. Part 20 (1980), which require that protest allegations be filed not later than 10 working days after the basis for protest is

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known or should have been known, whichever is earlier.
4 C.F.R. 20.2(b)(2).

A member of our Office of General Counsel orally acceded to a request by Arawak for an extension beyond the 10-day period provided in 4 C.F.R. 20.3 (d) for filing comments on an agency report. In acceding to the request for an extension, we assumed that the extension was being granted only for filing comments on the supplemental report. We were not aware that Arawak would also be filing new protest allegations based on the other material supplied by the agency in response to the protester's Freedom of Information Act FOIA request which Arawak received along with the supplemental report. Had we been aware of Arawak's intentions, we would have directed the protester's attention to the filing requirements for protest allegations in section 20.2(b)(2) of our Procedures, which would have allowed Arawak 10 days from the date it received its FOIA materials to file any protest allegation based on those materials.

Our Bid Protest Procedures are designed to promote prompt resolution of protests and, therefore to be considered timely, protesters must raise new bases of protest within 10 working days of actual or constructive notice. Arawak did not do that here. However, we are concerned that Arawak may have been misled, albeit unintentionally, into believing that in granting the extension for filing comments, we were waiving the time limits of 4 C.F.R. 20.2(b)(2). See Holmes and Narver, Inc., B-196832, February 14, 1980, 80-1 CPD 134. While our Procedures would otherwise mandate a finding of untimeliness, under the circumstances of this case, fairness dictates that we consider the merits of the allegations at issue. For the future, however, bid protest allegations must be filed within the time limits prescribed by section 20.2.

The allegations at issue are that Dialogue Systems, Inc. (Dialogue), the successful offeror, was accorded preferential treatment over Arawak by HHS evaluators through the waiver of various informational deficiencies

in Dialogue's proposal whereas Arawak was held responsible for its informational deficiencies; that Dialogue's proposal failed to include resumes for proposed subcontract staff; that Dialogue's "proposal authorship was not presented"; and the initial point scores appearing on the evaluators' rating sheets were changed several times.

In our prior decision in this matter we held that our scope of review with respect to the evaluation of proposals in cases such as this is limited to determining whether there has been fraud or bad faith on the part of Government officials.

Here, Arawak fails to explain the impact of Dialogue's failure to reveal the proposal authorship nor does the fact that evaluators changed point scores in the evaluation of both offerors by itself indicate any impropriety. See Burns and Roe Tennessee, Inc.--Reconsideration, B-189462, August 3, 1979, 79-2 CPD 77. As far as the lack of subcontractor resumes and the apparent failure of Dialogue to include some information in its management plan are concerned, these deficiencies were not as significant in the agency's judgment as those found in Arawak's proposal. Although Arawak does not agree with the agency's judgment in these matters, it does not argue that HHS acted in bad faith or that fraud was involved. Nor is there evidence of either fraud or bad faith in the record. Thus, we have no basis to object to the agency's evaluation.

That portion of our prior decision which denied the protest is affirmed. That portion of the protest which was dismissed by our prior decision is now denied.

Harry R. Van Clave
For the Comptroller General
of the United States